

April 7, 1998

Mr. Dwight F. Kalash
Grand Forks City Attorney
PO Box 5299
Grand Forks, ND 58206-5299

Dear Mr. Kalash:

Thank you for your March 24, 1998, letter inquiring whether N.D.C.C. § 27-20-13 authorizes a law enforcement officer to take a truant child into custody.

N.D.C.C. § 27-20-13 sets forth the circumstances in which a child may be taken into custody:

27-20-13. Taking into custody

1. A child may be taken into custody:
 - a. Pursuant to an order of the court under this chapter;
 - b. Pursuant to the laws of arrest;
 - c. By a law enforcement officer or a juvenile supervisor if there are reasonable grounds to believe (1) that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary, or (2) that the child has run away from his parents, guardian, or other custodian; or
 - d. By order of the juvenile supervisor made pursuant to subdivision h of subsection 1 of section 27-20-06.
2. The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of North Dakota or the Constitution of the United States.

Assuming that the juvenile court has not issued an order for the apprehension of a truant child or the child is not a runaway or in

Mr. Dwight F. Kalash
April 7, 1998
Page 2

immediate danger, the truant child may be taken into custody only pursuant to the laws of arrest.

N.D.C.C. § 29-06-01 defines an "arrest" as the "taking of a person into custody in the manner authorized by law to answer for the commission of an offense."

An arrest must be based upon probable cause to believe "that an offense has been or is being committed." Chadwick v. Moore, 551 N.W.2d 783, 786 (N.D. 1996).

The North Dakota Legislature has not classified truancy as a criminal offense. Rather, truancy is an "unruly" act and not a delinquent act under the Uniform Juvenile Court Act. N.D.C.C. § 27-20-02(10)(a). Since truancy is not an offense under North Dakota law, the laws of arrest would not apply to authorize the taking of a truant into custody solely based upon that child's truancy.

Several states have adopted statutes which authorize the warrantless arrest of a child who is in violation of that state's compulsory attendance law. Cal. Educ. Code § 48264 (West Supp. 1998); (N.Y. Educ. Law § 3213(2)(a) (McKinney 1995); Wash. Rev. Code Ann. § 28A.225.060 (West 1996).

North Dakota, however, has not adopted a similar statute. N.D.C.C. § 15-34.1-04 does impose a duty of enforcement of the compulsory attendance law upon every school board member, school superintendent, principal, truant officer, teacher, and county superintendent of schools in this state. No warrantless arrest provision is authorized by this section and the enforcement of the compulsory attendance law appears to be limited to a petition by the state's attorney, pursuant to N.D.C.C. ch. 27-20, for determination of whether a child is educationally deprived.

Since the laws of arrest will not apply to the taking of a truant child into custody, absent an emergency situation or the child being a runaway, a truant child could be taken into custody only pursuant to a court order. This order would most probably be issued after the filing of a petition with the juvenile court alleging that the truant is an "unruly child."

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

Mr. Dwight F. Kalash
April 7, 1998
Page 3

rpb/vkk